CF0000058248

(2)

Division Bench (Criminal)

IN THE HIGH COURT OF MADHYA PRADESH AT:JABALPUR

Criminal Appeal No. 922 of 1995.

APPELLANT : (IN JAIL)
Nansai S/o Naokorhia, Caste-Nagesia
Aged. about-30 years,
Occupation-Agriculture,
R/o Village-Agasi P.S.-Dhorpur,
Distt.Sarguja (MP)

VERSUS

RESPONDENT : The State of Madhya Pradesh,
through P.S-Dhorpur Distt.Sarguja (MP)

CRIMINAL APPEAL UNDER SECTION 374 (2) OF THE CODE OF CRIMINAL PROCEDURE ,1973 :

Filed on 5/12/95
by Shri Sunil Sinha
Advocate
R. & D. R.

XI-HC-22

(83)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक G.A.922/95 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

7-2-2006

Mr. A.K. Prasad, counsel for the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor with Mr. Sachin Singh Rajput, Deputy Govt. Advocate for the State/respondent.

Oral judgment dictated on Dais.

Per L.C. Bhadoo, J: -

By this appeal under Section 374 (2) of the Cr.P.C. the appellant has questioned legality and correctness of the judgment of conviction and order of sentence dated 21-6-1995 passed by the 1st Additional Sessions Judge, Ambikapur, in Sessions Trial No.306/93, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 read with Section 34 of the I.P.C., sentenced him to undergo imprisonment for life and pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for two months.

Case of the prosecution is that on 8-9-1992 Sukhmania, her husband Sirna and her daughter Bilaso went to the house of Vishwanath and they returned from there at about 6 p.m. At that time Dhaneshwari Bai (since deceased) was at her residence and she disclosed to Sukhmania that accused Sukus has beaten her. At about 6 p.m. accused/appellant Nansai came there and started demanding liquor from Sukhmania, which she refused. On this Nansai insisted for providing liquor upon which Sukhmania went near her mother-in-law Dhaneshwari Bai. Nansai enquired from

[पीछे देखिये

(34)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक G.A.922/95 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Dhaneshwari Bai as to who has assaulted her. She replied that Sukus has assaulted her. On this Nansai assaulted Dhaneshwari Bai and started pressing her chest. In the mean time, Sukus also came and both the brothers (accused Sukus & appellant Nansai) started assaulting Dhaneshwari Bai. Nansai assaulted with stick on head and hands as a result of which Dhaneshwari Bai received injuries. Report of the matter Ex.P-1 was lodged by Sirna at Police Station: Dhaurpur. Initially offence under Section 307 read with Section 34 of the I.P.C. was registered and later on, on 10-9-1992, Dhaneshwari Bai succumbed to the injuries sustained by her. The investigating officer converted the offence into Section 302 read with Section 34 of the I.P.C. and started investigation. Post-mortem on the body of Dhaneshwari Bai was conducted by Dr. S.K. Sinha (PW-8) and he prepared the post-mortem report Ex.P-10 in which he opined that the cause of death is comma due to head injury.

After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, First Class, Ambikapur, who in turn committed the case to the Sessions Judge, Ambikapur, from where learned 1st Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to establish charge examined ten witnesses. On the other hand, statement of the accused/appellant was recorded under Section 313 of the Cr.P.C. in which he denied the prosecution evidence. However, co-accused Sukus died during trial.

Learned Additional Sessions Judge after hearing the arguments of Additional Public Prosecutor and counsel for the accused, convicted and sentenced the accused as mentioned in para 1 of this judgment.

[पीछे देखिये

(35)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक G.A.922/95 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

We have heard learned counsel for the parties.

The homicidal death of Dhaneshwari Bai is not in dispute.

Learned counsel for the appellant, at the outset, submitted that there was no intention of the accused/appellant to cause the death of Dhaneshwari Bai. He argued that the accused/appellant assaulted Dhaneshwari Bai with stick and co-accused Sukus also assaulted her. Dhaneshwari Bai died after two days of the incident. Therefore, offence against the accused/appellant does not travel beyond Section 304 Part-II of the I.P.C.

On the other hand, learned counsel appearing for the State/ respondent supported the judgment of the trial Court.

Involvement of the accused/appellant in the crime in question is established in view of the evidence of Sukhmania (PW-5) who witnessed the crime and her evidence is corroborated by the medical evidence of Dr. S.K. Sinha (PW-8). As far as the argument advanced by learned counsel for the appellant is concerned, from the evidence of Sukhmania it has come on record that in the first instance, Sukus assaulted the deceased, thereafter, the accused/appellant came and he asked for liquor from Sukhmania, when she refused and went nearby Dhaneshwari Bai, the accused/appellant picked up a stick and assaulted Dhaneshwari Bai on head & hand. It is admitted position that the deceased died after two days of the incident.

In view of the above facts, there is no evidence that the accused/ appellant assaulted Dhaneshwari Bai with intention to cause her death. Rather in the spur of moment, when Sukhmania refused to provide him liquor. the accused picked up a stick and assaulted deceased Dhaneshwari Bai on

[पीछे देखिये

(36)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक G.A. 922/95 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

head & hand, as a result of which the deceased died after two days. Therefore, in our opinion, offence against the accused/appellant does not travel beyond Section 304 Part-II of the I.P.C.

In the result, the appeal partly succeeds and the same is partly allowed. Conviction and sentence awarded to the accused/appellant under Section 302 read with Section 34 of the I.P.C. are set-aside and he is acquitted of that charge, instead thereof, he is convicted under Section 304 Part-II of the I.P.C. and sentenced to undergo R.I. for ten years. The accused/appellant is stated to be under detention since 1992 which is not disputed by learned counsel appearing for the State/respondent. Therefore, the accused has already undergone the sentence imposed upon him. He be set at liberty forthwith, if not required in any other case.

Parties are entitled for certified copy of this order.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

Soma

[पीछे देखिये